

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Sprint PCS And AT&T Petitions For)	WT Docket No. 01-316
Declaratory Ruling On CMRS Access)	DA 01-2618
Charge Issues		

Comments Of:

**Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC
(Collectively, "ILECs")**

November 30, 2001

Background

The ILECs are small rural incumbent local exchange carriers providing service in Oklahoma and Kansas. The ILECs have an interest in the outcome of this proceeding because they are all access providers¹ for interstate and intrastate interexchange traffic, including cellular traffic originated by customers connected to the networks of the ILEC's. Interexchange cellular calls originating on the ILEC's networks are 1+ calls that are routed by the ILECs to the customer's service provider for the call, a presubscribed interstate or intrastate interexchange carrier (IXC) such as AT&T. The IXC service provider transports the cellular traffic of its presubscribed customer to the cellular carrier for termination. The IXC service provider also collects the retail toll revenue from its presubscribed customer for these 1+ calls that are terminated to CMRS carriers such as Sprint PCS.

Summary Of Comments

The ILEC's support the Petition of Sprint PCS. IXC's such as AT&T should pay Sprint PCS for the use of Sprints network to terminate IXC customer traffic. To allow IXCs the free use of any carriers network, including Sprint PCS's network: (a) is at odds with the current compensation regime, (b) is economically inefficient, (c) is at odds with fair and equitable competition and (d) results in windfall revenues for IXCs such as AT&T. There is no basis to draw a distinction, as AT&T attempts to do, between compensation for the termination of wireline and compensation for wireless traffic. Such a distinction, as well

¹ The ILECs filing these comments are network access providers. They provide the interexchange network facilities that retail toll, wireless and other providers utilize to complete (originate, transport and terminate) calls for their retail services in rural areas.

as any distinction between service providers such as IXC's and ILECs delivering traffic to CMRS provider networks for termination, would be discriminatory and anticompetitive.

**CMRS Providers Should Be Compensated By IXC's That Utilize Their Facilities To
Complete Calls**

AT&T argues that: "...access charge payments by IXC's to CMRS carriers are unwarranted and that the longstanding industry bill and keep compensation mechanism should remain intact..."² Apparently, AT&T believes that it should continue to have free use of Sprint's network to terminate its customer's calls because in the past Sprint PCS and other CMRS carriers did not request payment for the use of those facilities. AT&T is wrong and this argument provides no basis for AT&T's proposal that bill and keep be continued. CMRS providers have a right, irrespective of past "de facto" compensation arrangements to request that they now be compensated by IXC's for the use of their networks to complete the calls of IXC customers. Under the current intercarrier compensation regime, the customer's service provider for toll service (in this case an IXC such as AT&T) bills the customer for the service provided, retains the revenues for the service, uses the revenues to cover its costs³ and is responsible for paying all other carriers (LECs as well as CMRS providers) for the use of their networks to originate or transport or terminate the calls generated by the customer.

² AT&T Petition For Declaratory Ruling, filed October 22, 2001, page 2. AT&T makes similar unfounded comments on pages 2 and 3 of its Petition where it states that the "...de facto 'bill and keep' approach to IXC-CMRS interconnection ... spontaneously arose in the industry and ... has been the practice for 20 years..." and on page 4 of its Petition, where it states that the current arrangement was "...voluntarily implemented..."

³ The revenue billed to its retail customer compensates the IXC for the costs to originate, transport and terminate the customer's call.

In plain language, the carrier (in this case AT&T) that has the customer's revenue for a CMRS call should pay all other carriers (LEC and CMRS network access providers) whose facilities are used to complete the call. This is both an economically rational and practical compensation regime because the carriers whose networks are used to complete the call by the service provider's customer are compensated from the revenues collected from the customer by the customer's service provider. In and of itself, this process or regime creates no market distortions, encourages efficient interconnected use of the network, encourages investment in interconnected networks and thus insures efficient, competitively and technologically neutral development of interconnected competitors. Sprint PCS has the right to expect an IXC such as AT&T, to pay for the use of Sprints network facilities to transport and/or terminate the IXC's customers calls.⁴

**The Distinction AT&T Attempts To Draw Between Compensation For Wireline
Facilities And Compensation For CMRS Carrier Facilities Does Not Exist**

In order to avoid compensating CMRS providers for the use of their facilities, AT&T makes a number of arguments that attempt to show that compensation is not necessary for CMRS providers because of differences between wireless and wireline carriers. In fact, AT&T is likely correct, there are differences between wireless and wireline carriers. However, these differences have no bearing on the issue of compensation for the use of a wireless carriers network by an IXC such as AT&T. On page 10 of its Petition, AT&T asserts that: "...the wireless market shares none of the characteristics that have justified the imposition of access charges on IXCs." To support this incorrect assertion, on pages

⁴ The ILECs take no position as to the proper compensation rate level. The compensation rate is normally established in compensation negotiations between the parties, not in litigated proceedings or through "pervasive regulation" as AT&T suggests on page 3 of its Petition.

5 to 13 of its Petition, AT&T presents a brief and flawed⁵ history of the development of access charges and the purported characteristics of the wireless market that have, according to AT&T, made access charges unnecessary. In summary, the characteristics AT&T discusses are:

- “Unlike the wireline local exchange market, the market for end user wireless services is characterized by full and vigorous competition.”⁶ AT&T claims that this means that no compensation is due to wireless providers for the use of their facilities. AT&T may be correct that the wireless market is very competitive. However, any differences in the degree of competition between wireless and wireline markets have no bearing on the appropriateness of compensation for the use of either a wireless or a wireline network providers’ facilities. Competitive neutrality requires that all providers that utilize network providers facilities, irrespective of the degree of competition in the market, pay for the use of the facilities. If one user of CMRS facilities (a CLEC or LEC toll service provider) is required to pay for the use of those facilities to terminate calls, while another user of those same facilities (an IXC such as AT&T) is allowed to utilize them for free, the CLEC or ILEC is placed at a competitive disadvantage because its services must recover the CMRS termination costs, while AT&T services would not. AT&T’s proposal that it be allowed to utilize CMRS network facilities for free is

⁵ AT&T leaves the impression on pages 5, 6, 19 and 20 of its Petition that the only purpose for developing access charges was to support universal service by recovering a portion of non-traffic sensitive (primarily loop) costs through access rates. This is incorrect. In addition to “implicitly” recovering through access rates a portion of loop costs, access rates were designed to recover, on a competitively neutral basis from all carriers that utilized access facilities, the traffic sensitive costs to originate, transport and terminate calls.

⁶ AT&T Petition, page 10.

clearly self serving and anti-competitive and should be rejected by the Commission.

- Wireless carriers: "...bill their own end users for usage of the wireless network and keep that revenue as full compensation for the costs incurred by the wireless carriers in terminating (and occasionally originating) long distance calls."⁷ AT&T apparently believes that because wireless carriers bill their end users a charge to terminate calls (while wireline carriers do not), further terminating compensation from the IXC service provider is unnecessary. To the extent this principle were to be applied to all users of CMRS transport and terminating facilities, it might be correct. However, AT&T is apparently proposing that only IXCs, and not other users of CMRS networks, be exempted from paying for the use of CMRS network terminating facilities. There is no basis for this distinction. As discussed previously, any such distinction between service providers, which utilize the CMRS network to terminate calls, would be discriminatory and anti-competitive and should be rejected by the Commission.
- Compensation from IXCs is unnecessary because: "...CMRS carriers recover their network costs from their end users."⁸ Additionally, on page 4 of its Petition, AT&T states: "At the time that the CMRS carriers made their investments and built their networks, ... none of the carriers had a reasonable expectation that they would be able to collect access charges from IXCs. Permitting CMRS carriers now to collect access would thus constitute a wholly unjustified windfall." These assertions by AT&T are without foundation and provide no valid rationale as to

⁷ Id.

⁸ Id., page 2.

why IXCs should not pay, at some rate level for the use of CMRS network facilities. AT&T's discussion may have a bearing on the level at which the CMRS rates should be established through negotiations, but AT&T's assertions do not support free use of the CMRS network. In fact, if the Commission were to grant AT&T's Petition, it would be AT&T who would continue to receive the windfall in revenues that it has been enjoying for the period during which it has not paid CMRS providers for the use of their facilities. These windfall revenues AT&T is receiving are the result of establishing retail rates designed to recover originating, transport and terminating costs, but, as AT&T admits, not using the revenue generated from retail customers to pay CMRS providers for termination and instead, keeping the revenue.

- Unlike wireline carriers: "... CMRS licensees are not subject to federal rate regulation and are not permitted to file tariffs with the Commission."⁹ AT&T further asserts on page 3 of its Petition that maintaining bill and keep would: "...enable both the Commission and the state commissions to avoid regulating both CMRS-IXC compensation arrangements as well as CMRS end-user rates..." and would avoid: "...the duty to engage in pervasive regulation of CMRS carrier's access rates." AT&T is attempting to raise issues that do not and likely will not exist. At odds with AT&T's comments, fair and competitively neutral compensation arrangements are the foundation for interconnection of both competing and non-competing carrier networks. The access compensation arrangement proposed by Sprint PCS will not result in additional regulation of the CMRS industry and its end-user or access rates. The experience that the

⁹ Id., page 11.

Commission has had with CLEC industry access rates, discussed by AT&T on pages 7 to 10 of its Petition, is unlikely to reoccur with the CMRS industry, in particular in view of the actions taken, and example set by the FCC in the CLEC Access Charge Order.

- There is: "...no regulatory or market constraint [which] prevents wireless carriers from recovering their full network costs from their end users."¹⁰ Again, while this is an interesting and partially correct¹¹ observation by AT&T, it has no bearing on the issue of payment for the use of Sprint PCS (or any providers, CMRS or ILEC) network facilities. AT&T uses Sprint PCS facilities to complete calls made by AT&T customers and AT&T has collected revenues from its customers to cover these termination costs. Consequently, AT&T should not be allowed simply to keep the revenues as a windfall and use the Sprint network for free. Instead, the Commission should require AT&T to pay compensation to Sprint (at a negotiated level) from the revenues AT&T collected from its retail customer.

In summary, none of the "characteristics" of the wireless market, nor the "distinctions" AT&T discusses absolve AT&T of its obligation to pay Sprint PCS or any other CMRS provider (as AT&T pays wireline network providers) for the use of the providers network to complete AT&T customer calls.

¹⁰ Id., page 11, information in brackets added for clarity.

¹¹ If the CMRS market is as competitive as AT&T alleges, there may be a market constraint on the costs that may be recovered from end users. It would be economically inefficient and detrimental to a CMRS providers' competitive service offerings to recover costs used by AT&T, not from AT&T, but from CMRS customers.

**The Most Efficient Compensation Mechanism Is Not Bill And Keep, As AT&T
Suggests. Instead, Usage Based Compensation Meets The Goals Of The
Commission**

On page 17, of its Petition, AT&T incorrectly asserts that: "...the vigorous competitiveness of wireless services makes the existing bill and keep regime that has prevailed in the wireless context the most efficient and appropriate intercarrier compensation mechanism...." On page 18, AT&T also incorrectly asserts that: "The bill and keep system in the IXC-CMRS context likewise promotes efficient network utilization and carrier selection by ensuring that the correct economic signals will be sent. Because end users will bear the full economic cost of their selection of a high-priced access provider, end users will have an incentive to choose an efficient carrier." AT&T is wrong on all counts in its assertions. The only beneficiary of this anticompetitive and discriminatory proposal is AT&T itself. By obtaining free use of Sprint's facilities, while pocketing the revenues it collected from its retail customers to cover the termination costs, it obtains a significant discriminatory and anticompetitive advantage over other toll providers who must pay for the use of Sprint's facilities to terminate calls.

In the recent Intercarrier Compensation NPRM,¹² the Commission laid out goals for an intercarrier compensation mechanism. As the following paragraphs demonstrate, usage based compensation as proposed by Sprint PCS satisfies those goals, while AT&T's bill and keep proposal does not.

¹² In the Matter of Developing a Unified Intercarrier Compensation Regime, FCC Docket No. 01-92, released April 27, 2001.

1. Usage based intercarrier compensation encourages economic efficiency. The service provider (in this case AT&T), which has the revenues for a call, pays compensation for the use of network provider facilities used to complete the call. Intercarrier compensation levels are constrained to economic levels through contractual negotiations, competition and, if necessary, through a normal dispute process – the courts or regulatory intervention (as was the case with the CLEC Access Charge and ISP Intercarrier Compensation Orders). Likewise, the service provider's (AT&T's) retail rates reflect all of the calls costs – its own and those of interconnected providers whose facilities are used to complete the call. This regime insures the service provider's retail rates are established at appropriate market levels and insures that appropriate entry and exit market signals are given to competitors. On the other hand, economically, the only beneficiaries of AT&T's bill and keep proposal are IXC service providers. Because these service providers do not have to face or deal with all of the costs they incur for providing the service, IXCs may miss-structure and miss-price their retail services. The result will be uneconomic rate structures and prices. AT&T's bill and keep proposal (or access exemption), results in costs being recovered from consumers who did not cause them and who should not be responsible for their recovery – the general body of local exchange customers.

2. Usage based intercarrier compensation encourages investment in interconnected networks. Network carriers (ILEC, CLEC, CMRS) are incented to place appropriate levels of investment (based on traffic levels) and interconnect their networks because they will be paid for the use of their facilities to originate, transport and terminate calls originated by service providers. On the other hand, not being paid for

facilities utilized by a service provider, and instead having to recover the costs of those facilities, if possible, from the wrong customer (the general body of customers connected to your network), is unlikely to incent any network provider to invest in network facilities required for interconnected networks.

3. Usage based intercarrier compensation encourages the efficient development of competition. Because all service providers must pay for the network costs of completing calls, all competitive service providers have an equivalent competitive opportunity to enter markets and provide service at competitive retail rate levels. On the other hand, bill-and-keep compensation for one group of service providers, as proposed by AT&T (the IXC's) puts other toll service providers, that must pay for the use of CMRS facilities to complete calls, at a competitive disadvantage. This anticompetitive treatment for one group of service providers will distort the market (as occurred with the ISP access charge exemption), ultimately resulting in a lack of competition and efficiency, particularly in rural areas.

4. Usage base intercarrier compensation minimizes regulatory intervention. The major issue that should be dealt with in the Sprint PCS and AT&T Petitions is the appropriate access compensation level AT&T should pay Sprint PCS. Potentially a carrier whose terminating network is used to complete a service provider's call may be incented to charge rates that are well above its costs and thus derive windfall profits. With recent FCC actions to reduce access rates and as a result of the CLEC Access Charge Order, this appears to be a non-issue. Large LEC terminating access rates are dropping significantly (and rural LEC rates may follow) and CLEC access rates are essentially constrained to the LEC level. Expediency in the form of bill and keep that

may minimize regulatory intervention, as advocated by AT&T, should not be the governing factor in evaluating a compensation regime. Tariffs and contractual arrangements, which are the basis of usage-based compensation, will from time to time be the subject of disputes between the parties. As Sprint PCS observes in its Petition the proper way to resolve these disputes is through a review of the agreement by the appropriate regulatory or judicial authority.

Other Issues Raised By AT&T In Its Petition

1. On page 20 of its Petition, AT&T observes that: "...the wireless industry never relied on access payments in the pre-1996 Act period (or, indeed, at any time) to subsidize their end user services...Accordingly, unlike in the wireline context, no historical or regulatory reason exists to justify imposing the legacy access regime in the wireless context." This is an irrelevant and specious argument by AT&T and does not support their bill and keep proposal. AT&T conveniently ignores that historically, access charges were designed to support universal service by recovering a portion of non-traffic sensitive costs (an implicit subsidy), and also to recover traffic sensitive network access costs. A basic purpose of the access regime was to insure that traffic sensitive (as well as non-traffic sensitive) access costs were recovered on a non-discriminatory basis from all users of access facilities. The access regime insured (and continues to insure) that one service provider (such as AT&T) can not avoid paying those costs while a toll provider in competition with AT&T would have to pay, thus placing the competing toll provider at a competitive disadvantage. If AT&T is concerned about the level of the access rates proposed by Sprint PCS (and whether or not implicit support is included), it should


engage in the negotiation process with Sprint PCS rather than trying to gain a discriminatory competitive advantage by proposing bill and keep in its Petition for one class of service providers (the IXCs).

2. On page 20, AT&T states that: "...price caps set by state regulators on local rates may prevent LECs from recovering all of their network costs through end user charges, thus justifying some form of IXC payments....This problem...does not exist in the CMRS context." This difference provides no justification for allowing IXCs to utilize CMRS facilities for free. The issue is not whether LECs or CMRS carriers can recover some or all of their costs from end users, but instead that AT&T and all other toll service providers have an obligation to pay network providers for the use of the network provider's facilities to complete the service provider's calls.

Conclusion

AT&T's arguments, as discussed above, do not support granting its Petition that CMRS providers not be allowed to charge IXCs for access. Such a result would be discriminatory and anticompetitive and at odds with the Commissions' longstanding goals for the access charge regime and the goals outlined in the Intercarrier Compensation proceeding. This portion of AT&T's Petition should be rejected by the Commission.

Respectfully submitted on behalf of the ILECs by,



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November 30, 2001